

EXHIBIT 2

**REDACTED VERSION
OF DOCUMENT
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION
Case No. 3:17-cv-00939-WHA

WAYMO LLC,

Plaintiff,

vs.

UBER TECHNOLOGIES, INC.; OTTOMOTTO
LLC; OTTO TRUCKING LLC,
Defendants.

_____ /

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF CRAIG CLARK

FRIDAY, DECEMBER 22, 2017

Reported by:

Kelli Ann Willis, RPR, CRR

JOB No. 2780742

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| | | |
|----|---|----------|
| 1 | person's name, I would know her. Julie, I want to | 10:00:15 |
| 2 | say. I know -- yeah, beyond that, I would be | 10:00:20 |
| 3 | guessing. | 10:00:31 |
| 4 | Q. Did you have any interaction with the ATG | 10:00:32 |
| 5 | group while you were at Uber? | 10:00:34 |
| 6 | MR. STUMPHAUZER: Object to form. | 10:00:38 |
| 7 | THE WITNESS: So, interaction, I've seen | 10:00:39 |
| 8 | presentations. I've -- I've worked with -- I | 10:00:43 |
| 9 | worked with people in ATG on -- what have I | 10:00:48 |
| 10 | worked with ATG on? There was -- there was | 10:00:56 |
| 11 | some penetration testing that was done | 10:01:00 |
| 12 | vis-a-vis the -- kind of their -- like, | 10:01:02 |
| 13 | facilities. | 10:01:05 |
| 14 | There was an encampment of homeless people | 10:01:07 |
| 15 | near Harrison Street that was camped out in | 10:01:13 |
| 16 | their -- in the area, and I was -- and they | 10:01:15 |
| 17 | solicited some advice from me. | 10:01:19 |
| 18 | BY MS. TARAIZI: | 10:01:22 |
| 19 | Q. You said that you have seen presentations | 10:01:22 |
| 20 | made by ATG; is that correct? Did I recall that | 10:01:32 |
| 21 | correctly? | 10:01:35 |
| 22 | A. Yes. | 10:01:35 |
| 23 | Q. Have you ever given presentations to the | 10:01:36 |
| 24 | ATG group? | 10:01:37 |
| 25 | A. No. | 10:01:38 |

1 at the meeting, or small kind of admin something. I 12:08:57
2 don't require -- I don't recall -- I don't recall 12:09:01
3 using that, like, being a power user. 12:09:06
4 Q. What were the default retention settings 12:09:10
5 at UChat? 12:09:14
6 A. I don't know. I think at one point it 12:09:15
7 was -- I think it varied. I think UChat was -- 12:09:16
8 you'd have to talk to the Uber company person. 12:09:22
9 Q. Did you use HipChat? 12:09:27
10 A. I did. 12:09:28
11 Q. What did you use HipChat for? 12:09:29
12 A. The same way I used UChat: infrequently. 12:09:31
13 It's a terrible product. Horribly insecure. 12:09:34
14 Q. "Horribly insecure," what does that mean? 12:09:38
15 A. It means that the communication platform 12:09:41
16 itself is not secure. It's been hacked multiple 12:09:43
17 times. 12:09:46
18 Q. Is UChat secure? 12:09:48
19 A. I don't know. I'm not a security -- I'm 12:09:51
20 not a security expert, but I'm not aware of 12:09:54
21 compromises of UChat. 12:09:57
22 Q. Have you used Wickr? 12:09:59
23 A. Yes. 12:10:00
24 Q. And what did you use Wickr for? 12:10:01
25 A. I used Wickr for everything from 12:10:03

1 Q. How many such discussions? 12:16:26

2 A. I don't know. Twenty. 12:16:28

3 Q. And what instructions did you give 12:16:29

4 employees regarding when to use a particular 12:16:31

5 communications platform as opposed to another 12:16:34

6 communications platform? 12:16:36

7 A. If you are -- if you are on legal hold, 12:16:37

8 you can't use ephemeral communications. 12:16:40

9 Q. Is that the only instruction that you ever 12:16:44

10 provided to Uber employees regarding the use of 12:16:46

11 ephemeral communications? 12:16:52

12 A. I don't know. To the best of the 12:16:59

13 recollection, that's the one that sticks out I would 12:17:04

14 tell people. 12:17:06

15 Q. Did you ever instruct employees to use 12:17:09

16 ephemeral communications platforms in order to avoid 12:17:12

17 the retention of such communications? 12:17:16

18 A. Absolutely not. 12:17:18

19 Q. I think I asked you about the retention -- 12:17:38

20 the default retention of UChat, and I think you said 12:17:44

21 you don't know what the default retention period 12:17:47

22 was; is that correct? 12:17:50

23 A. I don't know for sure. It has changed, 12:17:52

24 but I think at one point it was maybe seven days. 12:17:54

25 But I'm not -- but I'm not certain. 12:17:59

1 be done through technical investigation, but then, 12:24:19
2 ultimately, you need to sit down with the person and 12:24:21
3 talk. Oftentimes, it's, like, No, I did have a 12:24:23
4 legitimate reason for looking at this. 12:24:26

5 So, that's why I would use Oscar. 12:24:28

6 Q. Did you use Oscar for any other 12:24:33
7 investigations? 12:24:35

8 A. Not that I recall. 12:24:36

9 Q. Did you use Oscar for any investigations 12:24:36
10 into Google or Waymo? 12:24:39

11 A. No. 12:24:41

12 Q. Did you communicate with Oscar using 12:24:45
13 Wickr? 12:24:48

14 A. I did. 12:24:49

15 Q. Why did you communicate with Oscar using 12:24:50
16 Wickr? 12:24:51

17 A. It's a great secure communication 12:24:51
18 platform. 12:24:54

19 Q. What does "secure" mean? 12:25:06

20 A. Secure means end-to-end encrypted, and 12:25:08
21 it's ephemeral. The best -- the best -- the most 12:25:12
22 secure way to store something is to not have it. 12:25:18

23 Q. Did you use Oscar and TAL Global -- did 12:25:23
24 you communicate with Oscar and TAL Global via Wickr 12:25:27
25 to avoid your discussions being discovered by 12:25:35

1 government investigators or parties to this 12:25:38
2 litigation? 12:25:40
3 A. No. 12:25:40
4 Q. You were starting to say something there? 12:25:42
5 A. No, because I saw where you were going. 12:25:43
6 It's just -- let's continue. 12:25:45
7 Q. Do you find the question offensive? 12:25:57
8 A. I do. 12:25:59
9 Q. Why is that? 12:25:59
10 A. Because it's accusing me of -- I find it 12:26:00
11 accusatory. 12:26:03
12 Q. I'm handing you a document that we will 12:26:09
13 mark as Exhibit 9704. 12:26:12
14 (The referred-to document was marked by 12:26:24
15 the court reporter for Identification as 12:26:24
16 Deposition Exhibit 9704.) 12:26:24
17 BY MS. TARAIZI: 12:26:24
18 Q. When you find it accusatory, what do you 12:26:26
19 mean by that? 12:26:28
20 A. The question felt accusatory. 12:26:30
21 Q. Who is [REDACTED]? 12:26:47
22 A. Can I have a minute with the document? 12:26:50
23 Q. Sure. 12:26:52
24 A. [REDACTED], I don't know if he's a 12:27:37
25 principal or employee of [REDACTED]. 12:27:41

1 A. I have. 02:29:19

2 Q. When did you instruct employees at Uber to 02:29:19

3 designate documents attorney-client privileged? 02:29:23

4 A. When they were seeking legal advice. 02:29:26

5 Q. Is that -- 02:29:31

6 A. And even if the specter of legal advice is 02:29:32

7 there, all right? So -- so, if I'm communicating -- 02:29:36

8 so this label thing is very interesting to me. 02:29:40

9 In that time, the way I see it, a label is 02:29:44

10 a tag, right? So, ultimately, privileged 02:29:46

11 determinations are made by judges. And they are 02:29:49

12 made by judges based on advocacy by the parties' 02:29:51

13 clients who are making decisions when they are 02:29:55

14 producing documents about what they think is 02:29:57

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15    privileged or not privileged.                                02:29:59
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16 Whether something has a tag on it really 02:30:01

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17 facilitates review: Hey, heads up, document 02:30:04
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18 reviewers, this might be privileged. 02:30:08

19 So, I see where you're going with this 02:30:10

20 line, Counselor, and maybe I can short-circuit it 02:30:15

21 with that. Let's move on to your next question. 02:30:17

22 Q. Did you provide an instruction to anyone 02:30:24

23 at Uber to mark documents as attorney-client 02:30:27

24 privileged when you believed the documents were not 02:30:30

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25     privileged?                                02:30:35
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|----|--|----------|
| 1 | all I'm asking. | 02:32:51 |
| 2 | MS. GOODMAN: Was it Uber's policy to tell | 02:32:52 |
| 3 | people to mark documents "attorney-client | 02:32:55 |
| 4 | privileged" if they were not privileged? | 02:32:57 |
| 5 | You can answer that question. | 02:33:01 |
| 6 | THE WITNESS: No. | 02:33:06 |
| 7 | BY MS. TARAIZI: | 02:33:07 |
| 8 | Q. Did you ever tell people to mark documents | 02:33:07 |
| 9 | as "attorney-client privileged" when they were not | 02:33:09 |
| 10 | privileged? | 02:33:12 |
| 11 | MR. STUMPHAUZER: The same issue. | 02:33:13 |
| 12 | MS. GOODMAN: You can answer that | 02:33:15 |
| 13 | question. | 02:33:15 |
| 14 | THE WITNESS: I'm sorry, you said I can | 02:33:16 |
| 15 | answer that question? | 02:33:18 |
| 16 | MS. GOODMAN: Did you ever tell people, as | 02:33:19 |
| 17 | a matter of policy, to mark documents as | 02:33:21 |
| 18 | "attorney-client privileged" when they were not | 02:33:23 |
| 19 | privileged? | 02:33:25 |
| 20 | THE WITNESS: You're saying I can answer | 02:33:25 |
| 21 | that question? | 02:33:32 |
| 22 | No. | 02:33:33 |
| 23 | MS. GOODMAN: If you want to find out what | 02:33:40 |
| 24 | he did, in fact, tell people, show him law dog | 02:33:41 |
| 25 | presentation that he's referenced multiple | 02:33:46 |

| | | |
|----|--|----------|
| 1 | times now. | 02:33:49 |
| 2 | MS. TARAIZI: We'll come to that. | 02:33:49 |
| 3 | BY MS. TARAIZI: | 02:34:00 |
| 4 | Q. Well, the law dog presentation, was that | 02:34:01 |
| 5 | the only presentation provided by Uber lawyers | 02:34:02 |
| 6 | regarding the topic of when to designate documents | 02:34:08 |
| 7 | "attorney-client privileged"? | 02:34:12 |
| 8 | MS. GOODMAN: Object to form. | 02:34:13 |
| 9 | THE WITNESS: I don't purport to have | 02:34:16 |
| 10 | knowledge of all of the presentations that | 02:34:18 |
| 11 | legal has given to everybody. I also don't | 02:34:19 |
| 12 | characterize what that presentation does. | 02:34:23 |
| 13 | BY MS. TARAIZI: | 02:34:33 |
| 14 | Q. Did you attend a meeting in Pittsburgh, | 02:34:33 |
| 15 | Pennsylvania, relating to the use of the | 02:34:35 |
| 16 | attorney-client privilege or dropped designations? | 02:34:37 |
| 17 | A. I've never been to Pittsburgh. | 02:34:42 |
| 18 | Q. So that's a no? | 02:34:44 |
| 19 | MS. TARAIZI: The court reporter is going | 02:35:18 |
| 20 | to hand you a document marked Exhibit 9709. | 02:35:25 |
| 21 | (The referred-to document was marked by | 02:35:32 |
| 22 | the court reporter for Identification as | 02:35:32 |
| 23 | Deposition Exhibit 9709.) | 02:35:32 |
| 24 | BY MS. TARAIZI: | 02:35:44 |
| 25 | Q. Mr. Clark, is that the law dog | 02:35:44 |

1 MS. GOODMAN: To be clear, meta data may 02:37:21
2 be associated with these documents. You may 02:37:22
3 just not have it at your fingertips. 02:37:25
4 MS. TARAZI: The question was, do you have 02:37:27
5 it, and I said I do not. 02:37:29
6 BY MS. TARAZI: 02:37:32
7 Q. Did you create a version of this document 02:37:32
8 that did not have the Uber logo on it? 02:37:34
9 A. No. 02:37:37
10 Q. Did you ever give a presentation using a 02:37:37
11 deck similar to this that did not have the Uber logo 02:37:43
12 on it? 02:37:47
13 A. No. This page -- this first page is 02:37:47
14 always the same with the exception of dates. Some 02:37:50
15 of them may have been dated different, but... so, I 02:37:53
16 wouldn't always catch the date. But every version 02:37:57
17 of this presentation had the same slide. This is 02:37:59
18 the Uber slide of a woman walking on a sidewalk in 02:38:05
19 San Francisco, and it is notable because we often 02:38:11
20 joke about where she's going and what she's doing. 02:38:15
21 Q. How many times did you give a presentation 02:38:32
22 using this document? 02:38:33
23 A. Using this specific deck? I don't know. 02:38:35
24 Q. How many times did you give a presentation 02:38:39
25 using a version of this deck? 02:38:40

1 presentations, do you just recall discussing the 02:46:35
2 need for or the desire to provide this presentation 02:46:38
3 with anyone other than Mat Henley? 02:46:42
4 A. I'm sorry? 02:46:44
5 Q. Do you recall discussing this presentation 02:46:44
6 with anyone other than Mat Henley? 02:46:46
7 A. Yes. I discussed it with many people. 02:46:49
8 Q. What did you discuss about the 02:46:50
9 presentation? 02:46:52
10 A. Like use it. Other people in legal wanted 02:46:52
11 it. I was -- when I was putting it together, I was 02:46:55
12 asking around if anybody had created decks about 02:46:59
13 privilege, and people saying, Yeah, it's a great 02:47:02
14 idea, you should do it. 02:47:05
15 So, several people in litigation. I 02:47:06
16 talked to Sullivan about it, perhaps. Yeah, a lot 02:47:10
17 of people I talked to about the presentation. 02:47:17
18 Q. What did you talk to Sullivan about it? 02:47:19
19 A. I said I'm going to give a presentation. 02:47:21
20 Q. Did you tell him what the presentation was 02:47:28
21 about? 02:47:30
22 A. Yeah. I'm going give a legal overview. 02:47:31
23 Q. Did you tell him any more than that? 02:47:33
24 A. I don't recall. 02:47:35
25 Q. How much do you recall about what you told 02:47:39

1 people as you showed each slide? 02:47:42

2 A. Oh, quite a bit, probably. 02:47:44

3 Q. Why did you use dogs? 02:47:46

4 A. I love dogs. Do you not like dogs, 02:47:48

5 Counsel? 02:47:50

6 Q. It's not my deposition. 02:47:52

7 A. Okay. 02:47:53

8 Q. What -- let's turn to the fourth page. 02:47:56

9 It's marked 340308. 02:48:06

10 A. 340308? 02:48:11

11 Q. Yes. 02:48:15

12 A. Yes, I see it. 02:48:15

13 Q. You put: "Law! Equals Science"? What is 02:48:16

14 that? 02:48:20

15 A. Actually, it says: Law, Bang, Equals 02:48:21

16 Equal Science." That's Javascript for: Law does 02:48:23

17 not equal science. 02:48:27

18 Q. I learned something. 02:48:28

19 A. I'm presenting this -- 02:48:28

20 Q. Exclamation point equal equal is the 02:48:33

21 "not," Javascript for -- 02:48:35

22 A. Java script, does not equal. Bang. The 02:48:37

23 programmers use bang for their exclamation point. 02:48:41

24 "Bang equal equal" means "does not equal" in 02:48:45

25 Javascript. 02:48:49

1 You've got to understand, I'm dealing with 02:48:50
2 a lot of technical people, coders and things like 02:48:51
3 this. Another way I'm able to get rapport and work 02:48:55
4 with these people, have them come to me, is to try 02:48:58
5 to speak their language. They would typically laugh 02:49:00
6 at me when they see that. They'd go: Look at the 02:49:01
7 Javascript, the old guy trying to -- the old boy 02:49:02
8 trying to use Java script. 02:49:06

9 Q. And I clearly didn't understand it. I 02:49:06
10 definitely do not speak Javascript. 02:49:14

11 What did you mean by law "does not equal 02:49:15
12 science"? 02:49:16

13 A. So, again, I'm dealing with very technical 02:49:17
14 people who are -- they -- they probably think in 02:49:20
15 math and in equations, if you will. They like 02:49:25
16 answers that are absolute. And the law is anything 02:49:28
17 but absolute. The law is not math. The law is not 02:49:35
18 science. 02:49:40

19 Q. If you turn to the slide marked 340311? 02:49:43

20 A. 340311. Yes. 02:49:51

21 Q. It looks like a mock-up of an email with 02:49:57
22 an X over it. 02:50:01

23 A. Yes. Let me explain. So, most of these 02:50:02
24 slides, I wouldn't say most, but many of these 02:50:05
25 slides have had animation that's not reflected in 02:50:09

1 the printout. 02:50:12

2 Q. Okay. 02:50:13

3 A. So, carry on. 02:50:13

4 Q. What was the slide attempting to reflect? 02:50:19

5 A. So, I've got to back up a little bit. 02:50:23

6 So, I've gone through -- at this point, 02:50:26

7 I've gone through the elements of privilege, and 02:50:28

8 then I'm giving them -- I'm showing them emails, and 02:50:31

9 saying: Is this -- what do you guys think? 02:50:34

10 Privileged, not privileged? 02:50:37

11 Q. Underneath the X, it's a little tricky to 02:50:44

12 read, but it looks like the text of the email that 02:50:49

13 you have included in the presentation says, 02:50:52

14 "Attached are the" -- do you recall what this says? 02:50:54

15 A. No. 02:51:00

16 Q. "Attached are the" -- something. It looks 02:51:00

17 like it might be say, "numbers for last quarter." 02:51:04

18 Does that sound like it could be right? 02:51:07

19 A. Could be. 02:51:11

20 Q. "We need to discuss ASAP. I am marking 02:51:11

21 this attorney-client privilege due to sensitivity." 02:51:15

22 Obviously, quite a number of those letters 02:51:17

23 are blacked out, but does that sound right to you? 02:51:21

24 A. It sounds right. 02:51:23

25 Q. Then there's an X over that. 02:51:24

1 Does that indicate that you informed the 02:51:27
2 attendees at the presentation that that email was 02:51:31
3 not privileged? 02:51:33

4 A. This is an example that I used to say -- 02:51:34
5 again, you have got to back up to the presentation. 02:51:36

6 So, at this point, I've kind of also 02:51:39
7 walked people through -- there's a lot of people who 02:51:41
8 aren't -- aren't Americans, either. You've got 02:51:46
9 people from all over. We're a very diverse group of 02:51:48
10 people. 02:51:51

11 So, I've given them a slight overview, a 02:51:51
12 quick overview of what -- of the litigation system 02:51:54
13 and the idea of privilege. 02:51:59

14 At this point, I've made -- I've already 02:52:00
15 said at least once or twice that we don't make these 02:52:02
16 determinations; judges make these determinations. 02:52:05

17 So, I'm up there. I give them this 02:52:08
18 hypothetical. I have them read it, and people raise 02:52:11
19 their hand. Okay, so, based upon what you've 02:52:13
20 learned so far, who thinks it's privileged? I get 02:52:16
21 the responses. And then the red X comes out. I 02:52:19
22 would make the determination that this is not 02:52:23
23 privileged. It is not concerning legal advice and 02:52:25
24 other elements are missing from it. 02:52:40

25 Q. What other elements are missing from it? 02:52:42

1 A. So, I'm not going to sit and analyze it, 02:52:45
2 but it doesn't look like it's -- the To and the 02:52:48
3 From, yeah. 02:52:52

4 Q. Well, I'm not asking you now, but I'm 02:52:54
5 interested in what you told the people who attended 02:52:57
6 the presentation as to why this would not be 02:53:00
7 privileged. 02:53:02

8 A. We should just get on the record that Uber 02:53:03
9 has waived privilege on this deck itself, correct? 02:53:05

10 MS. GOODMAN: You can discuss the contents 02:53:09
11 of this deck and the presentation you gave 02:53:11
12 surrounding the deck. 02:53:16

13 THE WITNESS: Okay. I'm sorry. Can you 02:53:17
14 ask your question again? 02:53:21

15 BY MS. TARAIZI: 02:53:23

16 Q. Sure. My question was: What did you tell 02:53:30
17 the attendees at your presentation as to why this 02:53:32
18 email was not privileged? 02:53:39

19 A. So I -- look, I didn't necessarily do 02:53:42
20 that. I've already given them all the -- all the 02:53:44
21 elements. And so, look, I don't -- when I'm 02:53:48
22 presenting, I try to be pretty dynamic. I don't 02:53:51
23 stick to -- I want to use images because it's my 02:53:55
24 firm belief, and the best presenters that I've ever 02:53:58
25 seen don't put words on PowerPoints. The presenter 02:54:00

1 presents the -- this should just be demonstrative. 02:54:03

2 So, at this point, I've given -- I've 02:54:07

3 gotten the poll. I've gotten everybody's idea. No 02:54:09

4 red Xs; let's go to the next one. 02:54:11

5 Q. So, if this is not the correct slide I 02:54:13

6 should be asking about, why don't you direct me to 02:54:17

7 the slide I should be asking about, so you can tell 02:54:19

8 me what it is that you told the attendees as to when 02:54:23

9 a document is protected by the attorney-client 02:54:25

10 privilege. 02:54:28

11 A. Okay. Back up one. And this is 02:54:29

12 difficult -- this is difficult because the animation 02:54:32

13 is not there. 02:54:34

14 Q. Okay. 02:54:35

15 A. And guys on the phone, I'm really sorry 02:54:37

16 about this because you're going to have no idea what 02:54:39

17 I'm talking about. 02:54:41

18 So, this is the picture -- I've got to 02:54:43

19 slow down talking to you. I'm so sorry. I'll slow 02:54:45

20 down. 02:54:48

21 Underneath there, you see two -- it looks 02:54:49

22 like tin cans, underneath the images. 02:54:51

23 Q. Yes, I see that. Yes. 02:54:55

24 A. Do you see that? 02:54:55

25 Q. Uh-huh. 02:54:56

1 A. So, that's the first image that pops up on 02:54:56
2 the slide, and I'm walking through the elements, and 02:55:00
3 there's a string between those two cans. 02:55:02

4 I say: What does the attorney-client 02:55:04
5 privilege cover? It covers a communication. It 02:55:06
6 could be any kind of communication. It could be a 02:55:08
7 conversation. It could be an email. It can be a 02:55:11
8 memo. It could be a Wickr. It could be a -- a -- 02:55:14
9 whatever it is, it just has to be a communication. 02:55:17

10 And then I say: Next element, it has to 02:55:21
11 be between a lawyer, our little law dog main guy 02:55:23
12 pops up here, and a client. And our little dog with 02:55:29
13 glasses over there pops up. All right? So then 02:55:34
14 I've got them following along. 02:55:37

15 You can't see this really at all, but you 02:55:39
16 see it looks like there's a top of a road sign that 02:55:40
17 pops up there, and I say: It has to be of and 02:55:43
18 concerning legal advice. 02:55:50

19 And the sign post is up there, and it has 02:55:51
20 help, support, advice, blah, blah, blah. I give 02:55:54
21 some examples about it. These other images you 02:55:59
22 cannot see here, but I think there's a dog that 02:56:02
23 looks very embarrassed like it did something wrong. 02:56:05
24 There's another one of a dog biting the finger 02:56:08
25 there. And then there's Kujo in the cage down at 02:56:12

1 the bottom there. 02:56:15

2 So, I'm giving them examples of what is of 02:56:15

3 and concerning legal advice. Well, it could be 02:56:18

4 broad, it could be narrow, but it's usually 02:56:20

5 something where you're thinking, man, I've got to 02:56:22

6 talk to a lawyer. 02:56:24

7 There's somebody in the lobby who has 02:56:25

8 chained himself to a bench and they're protesting, 02:56:28

9 and you're calling me for -- what are we going to do 02:56:32

10 to remove them, right? How do we engage with law 02:56:36

11 enforcement? 02:56:40

12 There's somebody -- somebody has -- 02:56:40

13 there's been a horrific homicide in the city that we 02:56:43

14 are operating in, and the -- and we need to -- we 02:56:49

15 need to mobilize to get information to law 02:56:53

16 enforcement. 02:56:56

17 There's a contract that you've worked on 02:56:57

18 that you think has maybe been breached. 02:56:58

19 So, those are the examples that I go 02:57:02

20 through with this. 02:57:03

21 And then the last dog, our -- our bulldog 02:57:04

22 here pops out, and I said: It cannot be used to 02:57:08

23 commit a crime or fraud. 02:57:11

24 Q. That's the dog with the sunglasses? 02:57:14

25 A. Yeah, that's our gangster bulldog there. 02:57:18

| | | |
|----|---|----------|
| 1 | Pretty nefarious, huh? | 02:57:21 |
| 2 | Q. Did you provide any other guidance other | 02:57:24 |
| 3 | than the guide you just described? | 02:57:27 |
| 4 | A. Yes. I continue through the deck. | 02:57:31 |
| 5 | Q. On this slide regarding generally the | 02:57:32 |
| 6 | contours of attorney-client privilege? | 02:57:34 |
| 7 | A. So, that's it in a nutshell. Now, because | 02:57:38 |
| 8 | I don't follow a book when I'm presenting these | 02:57:42 |
| 9 | things, certainly there's some variance. It would | 02:57:44 |
| 10 | be unlikely I used the exact same examples and | 02:57:48 |
| 11 | certainly not the same language each time. | 02:57:51 |
| 12 | MS. TARAIZI: Let's go off the record. | 02:57:54 |
| 13 | THE VIDEOGRAPHER: Off the record. | 02:57:57 |
| 14 | 2:55 p.m. This is the end of Media Unit No. 3. | 02:57:57 |
| 15 | (Thereupon, a recess was taken, after | 02:58:18 |
| 16 | which the following proceedings were held:) | 02:58:18 |
| 17 | THE VIDEOGRAPHER: We are back on the | 03:03:11 |
| 18 | record at 3:01 p.m. This is the beginning of | 03:03:11 |
| 19 | Media Unit No. 4. | 03:03:14 |
| 20 | BY MS. TARAIZI: | 03:03:16 |
| 21 | Q. Mr. Clark, did you ever instruct the | 03:03:16 |
| 22 | employees to be over-inclusive in their privilege | 03:03:19 |
| 23 | designations? | 03:03:22 |
| 24 | MS. GOODMAN: You may answer that | 03:03:26 |
| 25 | question. | 03:03:27 |

| | | |
|----|--|----------|
| 1 | THE WITNESS: No. This is, I hope, | 03:03:28 |
| 2 | demonstrating the exact opposite. It is | 03:03:36 |
| 3 | meaningless to do so. Ultimately, an arbitrary | 03:03:43 |
| 4 | of what is privileged or not privileged is a | 03:03:44 |
| 5 | judge. And the designation and the propriety | 03:03:50 |
| 6 | of those designations are done by outside | 03:03:54 |
| 7 | counsel, typically, who are doing productions. | 03:03:56 |
| 8 | BY MS. TARAZI: | 03:03:58 |
| 9 | Q. Let's turn to the slide that's Bates | 03:04:04 |
| 10 | stamped 340312. | 03:04:06 |
| 11 | A. 340312. | 03:04:10 |
| 12 | Q. Two pages on. | 03:04:14 |
| 13 | A. Yes. | 03:04:15 |
| 14 | Q. So, again, I don't really want to try to | 03:04:15 |
| 15 | read through the X here, but I believe what it -- | 03:04:20 |
| 16 | but I'm going to do it anyway. I believe what the | 03:04:22 |
| 17 | email underneath the X states that I'm happy to -- | 03:04:25 |
| 18 | A. I'm happy to report that the -- hmm. | 03:04:31 |
| 19 | Q. Something for department performance? | 03:04:38 |
| 20 | A. Yeah. | 03:04:41 |
| 21 | Q. Are -- | 03:04:42 |
| 22 | A. Oh, yeah. I can give you the gist of | 03:04:44 |
| 23 | this. | 03:04:46 |
| 24 | Q. Sure, that would be really helpful. | 03:04:46 |
| 25 | A. So, this is -- see, you've got the From | 03:04:48 |

1 and To. So, it's from legal bud. I don't know if 03:04:50
2 I -- no. It's legal budget. So, legal budget. And 03:04:53
3 it's coming from the legal budget person to Johnny 03:04:58
4 Law, who is senior counsel of whoever, and it's an 03:05:02
5 operations update and attorney-client privileged. 03:05:05
6 And it says, "I'm happy to report" -- you 03:05:10
7 know, whatever. This is about budget and spend for 03:05:12
8 outside counsel, and it's -- the budget for outside 03:05:15
9 counsel has declined. 03:05:19
10 Q. The written transcript will not reflect 03:05:21
11 that, but there was a note of pride in your voice. 03:05:24
12 Outside counsel found, amusing. 03:05:31
13 A. And it's -- it's marked "privileged" and 03:05:37
14 then I -- I'm sorry, there's no question pending. 03:05:39
15 Why don't you ask. 03:05:42
16 Q. I think you guessed where I was going, 03:05:43
17 which was, this is an example of the kind of 03:05:45
18 communication that you instructed attendees at the 03:05:48
19 presentation would not be privileged? 03:05:50
20 A. This gets the red X. 03:05:53
21 Q. Indicating that it was not privileged? 03:05:57
22 A. Correct. 03:05:59
23 Q. And I think we covered this earlier: Does 03:06:00
24 the red X on the prior page also indicate that this 03:06:04
25 is a communication that you did not -- that you 03:06:07

1 instructed the attendees at the presentation would 03:06:10
2 not be considered privileged? 03:06:12

3 A. Correct. 03:06:15

4 Q. That was a very long sentence. 03:06:18

5 The next page, the page marked 313, the 03:06:23

6 subject line of that email looks like it needs 03:06:28

7 your -- an A. Is that "advice" under there? 03:06:32

8 A. I think so. 03:06:34

9 Q. I don't want you to guess. 03:06:37

10 A. I need your -- yeah, ASAP. Maybe I need 03:06:39

11 your advice, need your advice ASAP, or something to 03:06:45

12 that effect. 03:06:49

13 Q. Is this an example of a communication that 03:06:49

14 you instructed attendees would be considered 03:06:54

15 privileged? 03:06:58

16 A. I will walk you through and give you a 03:06:59

17 little context. This one I try to get a little 03:07:01

18 tricky with them. 03:07:04

19 So, I've got it coming from the bis dev 03:07:05

20 department, once again, to Johnny Law, who I think 03:07:07

21 is only counsel this time. Poor Johnny. 03:07:09

22 It says: I need your advice. It says: 03:07:11

23 I'm concerned about a something deal. Is the 03:07:14

24 indemnity provision okay? 03:07:16

25 What does everybody think? And so some 03:07:19

1 people who -- no matter what they say, I say: But 03:07:23
2 it's not marked. It's not marked privileged. 03:07:25
3 They go: Oh, yeah. 03:07:28
4 I said green check. It's still 03:07:31
5 privileged. The marking means nothing. The marking 03:07:32
6 is irrelevant to whether a communication qualifies 03:07:36
7 for privileged treatment. 03:07:40
8 Q. Let's turn to the next slide. 03:07:44
9 A. I love Fido over here. 03:07:49
10 Q. I'm really getting a sense of your love of 03:07:52
11 dogs in general -- 03:07:54
12 A. Agree. 03:07:55
13 Q. -- in your presentations. 03:07:57
14 Are these various quotes scattered over 03:07:59
15 the next two slides quotes that you discussed with 03:08:01
16 the attendees at the presentation? 03:08:08
17 A. Yes. So, again, there's animation here 03:08:10
18 that obviously doesn't come through on the printout, 03:08:13
19 but, so, all you have coming up first is this chain 03:08:15
20 of dogs. 03:08:19
21 So, we've got -- we've got a big old 03:08:20
22 bulldog over here who's -- and I give them a little 03:08:25
23 setup. So, there's no red Xs and there's no green 03:08:27
24 checkmarks at this point. So, they're just looking 03:08:30
25 at it and I take them through this. 03:08:33

1 Here is our bulldog. He's an outside 03:08:35
2 vendor, and he's negotiating a contract with our bis 03:08:39
3 dev dog here. And them bis dev dog communicates 03:08:41
4 with Fido, who gives his advice and very sensitive 03:08:49
5 strategy back to bis dev dog, and then bis dev 03:08:52
6 dog -- that's got to be driving the court reporter 03:08:59
7 crazy -- and then bis dev dog sends it over as an 03:08:59
8 FYI, in case you are interested, and he sends it to 03:09:06
9 this group, the round table dogs down below. 03:09:09
10 So, I walk them through each stage and 03:09:12
11 say: Okay, what do you guys think? Is this 03:09:14
12 privileged? Is this not privileged? 03:09:17
13 So, the first one gets a red X. It's an 03:09:21
14 arm's length negotiation. An outsider. 03:09:23
15 Here, we've got bis dev dog and Fido going 03:09:26
16 back and forth. It seems like all the elements are 03:09:30
17 there. 03:09:33
18 Then I say: Look, it's unclear. I don't 03:09:33
19 know these -- who the round table dogs are. Are 03:09:35
20 they internal people? Are they external people? Do 03:09:38
21 they need to know these things? Should they have 03:09:42
22 been included in the first place? 03:09:44
23 This is where, remember, guys, law does 03:09:46
24 not equal science. Law does not equal math. There 03:09:48
25 are -- there are states, and the evidence laws in 03:09:51

1 states are different. Everywhere, judges may look 03:09:55
2 at the same set of facts and come to different 03:09:59
3 conclusions. So, it's tenuous, but we're going to 03:10:01
4 give it a no. 03:10:04
5 Q. Let's turn to the next slide, marked 316, 03:10:06
6 then. 03:10:11
7 A. Yes. I'm sorry. 316? 03:10:11
8 Q. Sorry. Two after the one you were just 03:10:16
9 describing. 03:10:18
10 A. Okay. 03:10:20
11 Q. What did you tell the participants when 03:10:22
12 you showed them this slide? 03:10:25
13 A. So, I was giving them a real world, 03:10:27
14 close-to-home, hard-hitting example of illustrating 03:10:29
15 the points that I've gone through on privilege; that 03:10:32
16 ultimately it's a judge that makes decisions about 03:10:35
17 whether something is privileged or not. 03:10:38
18 Q. Did you discuss the Meyer case with them 03:10:39
19 in connection with this slide or the next slide? 03:10:43
20 A. Briefly, yes. 03:10:47
21 Q. What did you tell them? 03:10:47
22 A. I told them that it was a situation where 03:10:48
23 the -- the -- there was a request to -- this is -- 03:10:51
24 I'm sorry, I have to check with counsel, like how -- 03:10:57
25 is that any different? You've waived on the entire 03:11:01

| | | |
|----|--|----------|
| 1 | presso, yeah. | 03:11:05 |
| 2 | MS. GOODMAN: The question is: What did | 03:11:07 |
| 3 | you tell them about these next two slides? You | 03:11:08 |
| 4 | can answer that question. | 03:11:10 |
| 5 | THE WITNESS: Okay. So, I gave them a | 03:11:11 |
| 6 | brief synopsis of the -- of the facts in Meyer | 03:11:13 |
| 7 | and the -- and the side show that was the -- | 03:11:16 |
| 8 | that ultimately was litigated, and I walked | 03:11:24 |
| 9 | them through Judge Rakoff's order, or at | 03:11:27 |
| 10 | least -- I didn't walk them through every page. | 03:11:33 |
| 11 | In fact, this -- I didn't walk them through | 03:11:38 |
| 12 | every page of the order. I gave them a little | 03:11:39 |
| 13 | bit of background on that and highlighted -- | 03:11:41 |
| 14 | I'm sorry. Do you want me to keep going? Do | 03:11:44 |
| 15 | you have a question? | 03:11:47 |
| 16 | BY MS. TARAIZI: | 03:11:47 |
| 17 | Q. Well, I was going to ask you a question | 03:11:47 |
| 18 | about the next slide, which is a slide marked 317. | 03:11:49 |
| 19 | It looks like you boxed out a portion of the order | 03:11:51 |
| 20 | in the Meyer case. | 03:11:55 |
| 21 | A. I did. | 03:11:57 |
| 22 | Q. And the portion of the order you boxed out | 03:11:58 |
| 23 | is -- the full, complete sentence in that box reads, | 03:12:00 |
| 24 | "The question here however" -- | 03:12:03 |
| 25 | A. Do you want me to read it? | 03:12:10 |

1 Q. "The questions here presented, however, 03:12:11
2 are whether such dubious practices in waiver result 03:12:14
3 in waiver of attorney-client privilege and work 03:12:17
4 product protection and whether disciplinary action 03:12:21
5 is warranted." 03:12:23
6 My version is very faint. 03:12:25
7 A. Yes, you read it correctly. 03:12:28
8 Q. What did you tell the participants about 03:12:30
9 that? 03:12:31
10 A. So -- so, I'm illustrating the prior -- 03:12:32
11 now we've come full circle, and we're -- we've got a 03:12:34
12 judge that is examining privileged documents to 03:12:38
13 determine -- in camera to determine whether or not 03:12:45
14 they are, in fact, privileged. 03:12:47
15 Q. Let's turn to the next slide. It reads -- 03:12:57
16 the underlying portion reads: "Uber and Ergo" -- 03:13:00
17 who is Ergo? 03:13:06
18 A. Ergo was a vendor. 03:13:08
19 Q. What services did the vendor provide? 03:13:10
20 A. They provided some investigative services. 03:13:13
21 Q. To who at Uber? 03:13:16
22 A. To Uber. 03:13:19
23 Q. To anyone in particular at Uber? 03:13:19
24 A. To the -- I think the -- well, to the 03:13:21
25 security group. 03:13:24

1 Q. To the Threat Ops Group? 03:13:25

2 A. To Threat Ops, yes. 03:13:27

3 Q. And Threat Ops to SSG? 03:13:28

4 A. No, this may have been before SSG. 03:13:32

5 Q. To Market Analytics? 03:13:35

6 A. No. 03:13:36

7 Q. Just generally Threat Ops? 03:13:37

8 A. This is the -- this would be more -- yes, 03:13:38

9 just generally Threat Ops. This is very early in my 03:13:43

10 tenure. 03:13:48

11 Q. "Uber and Ergo claimed attorney-client 03:13:48

12 privilege and/or work product protection over 03:13:52

13 numerous documents and voice recordings, and the 03:13:52

14 Court indicated it would need to review the 03:13:54

15 materials in camera to determine whether privilege 03:13:57

16 was correctly ascertained and/or whether the crime 03:13:59

17 fraud exception to the privilege applied." 03:14:02

18 What did you tell participants about that 03:14:04

19 slide? 03:14:07

20 A. So, I just walked them through this, and, 03:14:07

21 again, I'm saying: Look, you've got a federal judge 03:14:08

22 who has issued -- this was a fairly long order, and 03:14:12

23 I think it was a 31-page-order, or something like 03:14:15

24 that -- a 31-page order. Upfront and center, on the 03:14:18

25 first page of the order, is where he's going. 03:14:22

1 And I'm kind of showing them: Look, now, 03:14:24
2 the judge is saying he's got all the documents in 03:14:28
3 front of him, and he's going to look at them and see 03:14:31
4 if it meets the elements of privilege, and he's 03:14:33
5 going to see if the crime fraud exception applies to 03:14:36
6 vitiate the privilege. 03:14:42

7 Q. What did you tell the participants in 03:14:46
8 connection with the next slide? 03:14:49

9 A. So these are -- I'm looking at Bates 03:14:51
10 ending in 319; is that correct? 03:14:54

11 Q. That's correct. 03:14:56

12 A. So, I'm showing, saying: These are 03:14:59
13 clippings that were taken straight from media 03:15:01
14 reports of the -- of this case. 03:15:04

15 So -- and here you have -- you can see on 03:15:07
16 the -- the screen capture that's on the reader's 03:15:10
17 left. There is a message from Salle Yoo to Joe 03:15:16
18 Sullivan that has an antitrust lawsuit, SDNY against 03:15:21
19 Travis. 03:15:27

20 It's got -- the next text is 03:15:27
21 attorney-client communication-privilege. Salle 03:15:30
22 writing to Joe: Joe, can we find out a little more 03:15:33
23 about this plaintiff? 03:15:36

24 Joe responds. Joe sends it to Mat and 03:15:37
25 says: Please do a careful check on the plaintiff, 03:15:40

1 the one who is the driver named -- part of the case. 03:15:42

2 Q. Is that Spencer Meyer? 03:15:46

3 A. Yes, yes. 03:15:50

4 But what I'm illustrating from this is, 03:15:52

5 like, here's a communication that is marked 03:15:54

6 privileged from the general counsel to Joe Sullivan. 03:15:56

7 And it's been disclosed in the case, and it is -- 03:15:59

8 and it is in the news. 03:16:02

9 So, to the extent I hope I disabused 03:16:04

10 everybody of the notion of marking something 03:16:07

11 privileged is going to somehow magically protect 03:16:09

12 them. 03:16:13

13 Q. The topping off from Joe Sullivan to Mat 03:16:13

14 Henley reads, and it's a little hard to read on my 03:16:15

15 copy, but I think it says, "Please do a careful 03:16:15

16 check on this plaintiff, the person who is the 03:16:19

17 driver named party in the case." 03:16:21

18 Is it Uber's general practice to do a 03:16:23

19 careful check on plaintiffs in litigation against 03:16:25

20 Uber? 03:16:28

21 MS. GOODMAN: Object to form. 03:16:30

22 You can answer that question, but that is 03:16:36

23 way outside the scope of this case. 03:16:36

24 THE WITNESS: I can't comment on general 03:16:38

25 practice. It is good security practice to 03:16:40

1 investigate people who may be a threat to Uber, 03:16:43
2 to Uber's riders and drivers, and certainly to 03:16:45
3 executives of the company. 03:16:49
4 BY MS. TARAIZI: 03:16:50
5 Q. Did Uber do a careful check of Waymo? 03:16:50
6 MS. GOODMAN: Object to form. 03:16:55
7 THE WITNESS: I am unaware of any 03:16:57
8 investigations with respect to -- I don't even 03:16:59
9 know how to answer that question. I mean, I 03:17:04
10 don't know. 03:17:08
11 MR. STUMPHAUZER: Talking about Waymo. 03:17:10
12 That's progress. 03:17:11
13 BY MS. TARAIZI: 03:17:13
14 Q. Did Uber do a careful check of Google? 03:17:13
15 MS. GOODMAN: Object to form. 03:17:17
16 THE WITNESS: Not to my knowledge. 03:17:18
17 BY MS. TARAIZI: 03:17:19
18 Q. If you turn over two pages, or maybe 03:17:19
19 three, to the one marked 322, it looks like a 03:17:21
20 picture of Edward Snowden. 03:17:25
21 What did you tell -- 03:17:26
22 A. Let me get there. Let me get there. 03:17:31
23 Q. -- the people that you presented this deck 03:17:31
24 to -- 03:17:34
25 A. So, I think it's -- what did I tell them 03:17:34

1 about? Hopefully, the image speaks for itself. 03:17:36

2 So, we're kind of -- so, underneath the 03:17:44

3 picture of Snowden is the famous picture of Hillary 03:17:47

4 Clinton on her BlackBerry with her sunglasses on, 03:17:51

5 right? So, this is before the election, and so 03:17:55

6 it's -- I mean, it was a different time. 03:17:57

7 And I say, you know: Look, emails are 03:18:01

8 everywhere. Emails are -- can be taken out of 03:18:05

9 context. There's important things in emails that 03:18:09

10 people write all the time. And guess what? Snowden 03:18:14

11 pops up. There's always somebody out there that's 03:18:18

12 going to read them. 03:18:21

13 Q. Do you know who Rick Jacobs is? 03:18:22

14 A. Yes, I do. 03:18:25

15 Q. Did you work with him? 03:18:25

16 A. He worked in Threat Ops. I was a lawyer 03:18:29

17 embedded with Threat Ops. So, yes, projects we 03:18:32

18 worked on. 03:18:34

19 Q. What kind of projects did you work on? 03:18:36

20 A. Oh, I don't -- am I -- can I talk about -- 03:18:38

21 I guess you could talk about subtopics. 03:18:47

22 MS. GOODMAN: You can answer that question 03:18:49

23 as a general subject matter level that would be 03:18:50

24 on a privilege log, what kind of things did you 03:18:53

25 work with him on. 03:18:58

1 states: "Early in his tenure, Jacobs advocated for 03:44:24
2 a secure and encrypted centralized database to 03:44:26
3 ensure confidentiality and recordkeeping, but 03:44:29
4 provide access to intelligence for Threat Ops 03:44:32
5 personnel. He presented a draft proposal to 03:44:35
6 managers Henley and Clark." 03:44:37

7 I don't think this is what is meant here, 03:44:41
8 but you did not manage Mr. Jacobs, correct? 03:44:42

9 A. I did not manage Mr. Jacobs. 03:44:47

10 Q. Do you recall receiving a draft proposal 03:44:51
11 for a centralized database? 03:44:53

12 A. Not specifically, no. 03:44:56

13 Q. Do you remember discussing the centralized 03:44:58
14 database referenced on page 5 of the Jacobs letter? 03:45:02

15 A. I don't know what Jacobs is referencing on 03:45:07
16 page 5. And the sentence that you just read, while 03:45:08
17 I do recall a centralized -- a desire for a 03:45:11
18 centralized database that Mat Henley wanted to get 03:45:15
19 done, that I believe Jacobs was tasked to complete. 03:45:21

20 Q. Did you object to the creation of such a 03:45:30
21 database? 03:45:32

22 MS. GOODMAN: You can answer that 03:45:35
23 question. 03:45:36

24 THE WITNESS: No. 03:45:36
25

| | | |
|----|--|----------|
| 1 | acquisition -- | 03:55:19 |
| 2 | MR. STUMPHAUZER: No. This one is, did | 03:55:20 |
| 3 | you provide guidance. | 03:55:21 |
| 4 | MS. GOODMAN: Did you provide guidance. | 03:55:23 |
| 5 | I'm sorry, the live feed is not accurately | 03:55:25 |
| 6 | reflecting your question, so, could you please | 03:55:27 |
| 7 | repeat it? | 03:55:32 |
| 8 | BY MS. TARAIZI: | 03:55:33 |
| 9 | Q. Did you provide guidance to SSG with | 03:55:33 |
| 10 | respect to the acquisition of non-attributable | 03:55:35 |
| 11 | hardware? | 03:55:38 |
| 12 | MS. GOODMAN: Right. And that question | 03:55:39 |
| 13 | calls for legal advice, and I instruct you not | 03:55:40 |
| 14 | to answer. | 03:55:42 |
| 15 | MS. TARAIZI: Same instruction if I ask | 03:55:45 |
| 16 | about software? | 03:55:47 |
| 17 | MS. GOODMAN: What are you going to ask | 03:55:52 |
| 18 | about software? | 03:55:53 |
| 19 | BY MS. TARAIZI: | 03:55:54 |
| 20 | Q. Did you provide guidance to SSG with | 03:55:54 |
| 21 | respect to the acquisition of non-attributable | 03:55:56 |
| 22 | software? | 03:55:59 |
| 23 | MS. GOODMAN: Same instruction. | 03:55:59 |
| 24 | BY MS. TARAIZI: | 03:56:03 |
| 25 | Q. Are you aware of Uber storing data on | 03:56:09 |

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| | | |
|----|---|----------|
| 1 | non-attributable devices to avoid detection, | 03:56:13 |
| 2 | including in connection with legal discovery? | 03:56:15 |
| 3 | THE WITNESS: Counsel for Uber? | 03:56:20 |
| 4 | MS. GOODMAN: You may answer that | 03:56:24 |
| 5 | question. | 03:56:25 |
| 6 | THE WITNESS: No. | 03:56:25 |
| 7 | BY MS. TARAZI: | 03:56:25 |
| 8 | Q. Under heading C, the heading is | 03:56:32 |
| 9 | "Concealment, Cover-Up and Falsification of Records | 03:56:37 |
| 10 | Through the Abuse of Attorney-Client Privilege | 03:56:41 |
| 11 | Designations." | 03:56:43 |
| 12 | In the second paragraph, the second | 03:56:50 |
| 13 | sentence, beginning "during the presentation," it | 03:56:52 |
| 14 | states: "Clark verbally coached the participants on | 03:56:55 |
| 15 | how to use attorney-client privilege to ensure | 03:56:57 |
| 16 | sensitive intelligence collection activities would | 03:56:59 |
| 17 | not surface in litigation." | 03:57:03 |
| 18 | Is that correct? | 03:57:05 |
| 19 | THE WITNESS: Counsel for Uber? | 03:57:06 |
| 20 | MS. GOODMAN: You may answer that. | 03:57:07 |
| 21 | THE WITNESS: Sorry? | 03:57:09 |
| 22 | MS. GOODMAN: You may answer that. | 03:57:09 |
| 23 | THE WITNESS: No. | 03:57:10 |
| 24 | BY MS. TARAZI: | 03:57:10 |
| 25 | Q. The next sentence reads: "Clark also | 03:57:10 |

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1 redacted. 04:53:50

2 THE WITNESS: Counsel? 04:53:51

3 MS. GOODMAN: Object to form. And, again, 04:53:52

4 you're asking a question, does Mr. Clark 04:53:53

5 understand whether Uber worked unlawfully to 04:53:56

6 obtain trade secrets generally. 04:53:59

7 You cannot ask that question without 04:54:01

8 asking him to reveal his legal conclusions and 04:54:03

9 mental judgments. 04:54:05

10 Also, the question has nothing to do -- 04:54:06

11 or the part of the letter from which you are 04:54:08

12 reading has nothing to do with Waymo, and the 04:54:10

13 thing is, there's a redaction about who 04:54:12

14 Mr. Jacobs is alleging in this context. That's 04:54:16

15 not relevant to this case. So, you should move 04:54:19

16 on. 04:54:21

17 BY MS. TARAIZI: 04:54:24

18 Q. Are you aware of Uber ever remotely 04:54:24

19 accessing confidential corporate communications and 04:54:27

20 data from Waymo? 04:54:31

21 MS. GOODMAN: If you can answer that 04:54:33

22 question without revealing information in the 04:54:34

23 course of an attorney-client communication, 04:54:36

24 then go ahead and do so. 04:54:43

25 THE WITNESS: No. 04:54:45

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1 probably much more than that. 05:15:07

2 Q. Did any litigation hold that you received 05:15:09

3 in connection with the Jacobs allegation instruct 05:15:11

4 you not to use Wickr to discuss the case? 05:15:14

5 A. I don't recall the specific hold. I need 05:15:16

6 to see it. But it should be in my documents. 05:15:20

7 Q. Do you recall ceasing to use Wickr to 05:15:22

8 discuss Jacobs' allegations after receiving the 05:15:26

9 litigation hold? 05:15:29

10 A. Yes. I would not discuss the substance of 05:15:30

11 a matter that was on legal hold on an ephemeral 05:15:33

12 communication tool. 05:15:40

13 Q. Did you turn over your personal cell phone 05:15:41

14 in connection with the litigation hold placed in 05:15:47

15 connection with the Jacobs matter? 05:15:51

16 MS. GOODMAN: Objection, asked and 05:15:53

17 answered. 05:15:53

18 THE WITNESS: No. 05:15:54

19 MS. TARAIZI: For the record, I have 05:16:08

20 withdrawn the exhibit previously marked as 05:16:09

21 Exhibit 9712. 05:16:11

22 BY MS. TARAIZI: 05:16:20

23 Q. Did you have any -- did you ever play -- 05:16:20

24 strike that. I'll start again. 05:16:23

25 Did you play any role in investigating the 05:16:24

| | | |
|----|---|----------|
| 1 | allegations in the Jacobs letter? | 05:16:26 |
| 2 | A. I was interviewed. My machine was imaged. | 05:16:29 |
| 3 | Q. Who were you interviewed by? | 05:16:35 |
| 4 | A. Lawyers from WilmerHale. | 05:16:37 |
| 5 | Q. Were you interviewed by anyone in-house at | 05:16:45 |
| 6 | Uber in connection with that investigation? | 05:16:50 |
| 7 | A. I was with Angela Padilla and a lawyer | 05:16:55 |
| 8 | from Littler, as well. I believe she was from | 05:16:58 |
| 9 | Littler. | 05:17:01 |
| 10 | Q. From Littler? | 05:17:02 |
| 11 | A. Littler Mendelson. It's a law firm. | 05:17:03 |
| 12 | Q. And, also, you said by WilmerHale? | 05:17:06 |
| 13 | A. Yes. | 05:17:11 |
| 14 | Q. Are you aware of who at Uber was involved | 05:17:12 |
| 15 | in the investigation into the Jacobs allegations? | 05:17:15 |
| 16 | THE WITNESS: Counsel? | 05:17:19 |
| 17 | MS. GOODMAN: The question is, if you | 05:17:20 |
| 18 | know, who at Uber was involved in the | 05:17:21 |
| 19 | allegations and the investigation of the Jacobs | 05:17:24 |
| 20 | allegations. | 05:17:27 |
| 21 | THE WITNESS: So, I don't know everybody | 05:17:28 |
| 22 | that was involved, but I can give you names of | 05:17:29 |
| 23 | people who I believe were involved. Is that | 05:17:32 |
| 24 | what you would like me to do? | 05:17:35 |
| 25 | | |

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1 cannot do of a lawyer. 06:57:13

2 BY MS. TARAIZI: 06:57:17

3 Q. Did Uber use non-attributable devices to 06:57:23

4 perform competitive intelligence on Uber -- I'm 06:57:26

5 sorry, on Waymo? 06:57:31

6 MS. GOODMAN: You can answer that question 06:57:33

7 if you can do so without revealing the contents 06:57:34

8 of an attorney-client communication. 06:57:37

9 THE WITNESS: I don't know what you mean 06:57:41

10 by "unattributable device," but not to my 06:57:42

11 knowledge. 06:57:45

12 BY MS. TARAIZI: 06:57:45

13 Q. Did Uber use any devices that could not be 06:57:45

14 traced to Uber to perform competitive intelligence 06:57:48

15 on Waymo? 06:57:51

16 MS. GOODMAN: Object to the form. 06:57:54

17 Same instruction with regard to the 06:57:54

18 privilege. 06:57:56

19 THE WITNESS: Not to my knowledge. 06:57:57

20 BY MS. TARAIZI: 06:57:59

21 Q. Did Uber use any devices that could not be 06:57:59

22 attributed to Uber to perform competitive 06:58:02

23 intelligence on Google? 06:58:05

24 MS. GOODMAN: Object to the form. 06:58:07

25 Same instruction regarding the privilege. 06:58:08

1 THE WITNESS: Not to my knowledge. 06:58:10

2 BY MS. TARAIZI: 06:58:20

3 Q. Have you ever heard the phrase, 06:58:21

4 "augmented, non-attributable Internet collection"? 06:58:22

5 MS. GOODMAN: Yes or no? 06:58:28

6 THE WITNESS: No. 06:58:31

7 BY MS. TARAIZI: 06:58:31

8 Q. Has Uber ever used vendors to perform 06:58:31

9 competitive intelligence tasks using devices that 06:58:35

10 could not be attributed to Uber? 06:58:38

11 MS. GOODMAN: Same instruction with 06:58:41

12 respect to the privilege. 06:58:42

13 THE WITNESS: Not to my knowledge. 06:58:47

14 BY MS. TARAIZI: 06:58:52

15 Q. Who was involved in the competitive 06:58:53

16 intelligence gathering that Uber conducted of Waymo? 06:58:57

17 When I say "Waymo" in this context, I'm referring to 06:59:05

18 Waymo and Google's self-driving car division. 06:59:08

19 THE WITNESS: Counsel for Uber? 06:59:13

20 MS. GOODMAN: Object to the form of the 06:59:16

21 question. 06:59:17

22 You may answer that to the extent you can 06:59:17

23 do so without revealing the contents of an 06:59:19

24 attorney-client communication. 06:59:22

25 THE WITNESS: Okay. Can you re-ask the 06:59:23

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1 Q. Do you have any knowledge that anyone in 07:27:23
2 the autonomous vehicle group at Uber ever 07:27:25
3 purposefully labeled a document as privileged in 07:27:28
4 order to hide it from the court overseeing this 07:27:30
5 litigation? 07:27:33

6 A. I'm sorry, can you -- can you -- can you 07:27:34
7 reword it? 07:27:36

8 Q. Do you have any knowledge that anyone in 07:27:37
9 the autonomous vehicle group at Uber ever 07:27:39
10 purposefully labeled a document as privileged in 07:27:42
11 order to hide it from the court overseeing this 07:27:44
12 litigation? 07:27:47

13 A. No. 07:27:48

14 Q. Did you ever mark a document as 07:27:51
15 "attorney-client privileged" in order to hide it 07:27:52
16 from Waymo or Google? 07:27:57

17 A. No. 07:27:58

18 Q. Would you ever do that? 07:27:58

19 A. No. 07:27:59

20 Q. Did you ever direct anyone to destroy 07:28:00
21 evidence? 07:28:03

22 A. No. 07:28:03

23 Q. I would like to show you a document that 07:28:05
24 we will mark 9715. This is a document bearing Bates 07:28:08
25 label UBER 00355965, which I understand is being 07:28:29

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1 introduced to Waymo today in connection with a 07:28:33
2 variety of discovery requests that they have put on 07:28:37
3 us at this close of discovery. 07:28:39

4 Do you have the document in front of you? 07:28:41

5 A. I don't have it. You didn't give the 07:28:46
6 court reporter a chance to mark it. 07:28:47

7 (The referred-to document was marked by 07:28:58
8 the court reporter for Identification as 07:28:58
9 Deposition Exhibit 9715.) 07:28:58

10 BY MS. GOODMAN: 07:29:01

11 Q. I ask you to review this document. 07:29:03

12 (A discussion was held off the record, 07:29:46
13 after which the following proceedings were 07:29:46
14 held:) 07:29:46

15 BY MS. GOODMAN: 07:29:54

16 Q. Have you had a chance? 07:29:54

17 A. Almost. 07:29:55

18 Q. Okay. 07:29:56

19 A. Yes, I read the document. 07:30:27

20 Q. All right. I will direct your attention 07:30:28
21 to page 966, the bottom of the email string. 07:30:30

22 Alberto Fittarelli writes, "Craig, for 07:30:33
23 your review and legal advice. Thanks, Nicoletta. 07:30:38
24 Appreciate it." 07:30:40

25 Do you see that? 07:30:42

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1 A. I do. 07:30:42

2 Q. And you respond, "This really shows the 07:30:42

3 use of the A/C priv statement like we talked about 07:30:42

4 last week. Is thanking her really for my review and 07:30:46

5 advice? It just proves overuse." 07:30:49

6 What did you mean by that? 07:30:51

7 A. Well, I meant that this is -- I don't see 07:30:54

8 the elements of privilege in this. 07:30:57

9 I think I was -- you know, Alberto is 07:31:00

10 Italian, and I think the -- and in Europe, and so I 07:31:02

11 think -- look, the concept of privilege is hard 07:31:06

12 enough for Americans who have dealt with it, and 07:31:10

13 it's -- it's -- I think people who are not of the 07:31:14

14 United States have a much more difficult time. So, 07:31:17

15 I'm trying to make my point. 07:31:19

16 I think I was -- looking at this, I think 07:31:21

17 I was pretty frustrated with Alberto on this. It 07:31:24

18 must have been close in time to a presentation that 07:31:28

19 I gave. 07:31:29

20 So, I -- what I'm showing here is that 07:31:31

21 it's -- the label means nothing. 07:31:36

22 Q. And if you look at page -- the first page, 07:31:40

23 965, after you and Mr. Fittarelli have an exchange 07:31:42

24 about the use of privilege, you forward the string 07:31:50

25 to Rick@Uber.com. Is that Mr. Jacobs? 07:31:54

1 A. It appears to be. 07:31:58

2 Q. And you say to him, "I had a long talk 07:32:00

3 with Alberto this morning. I was disheartened by 07:32:02

4 the fact that my legal priv training did not sink 07:32:05

5 in, even though this is almost identical to an 07:32:09

6 example I had them all discuss and go through." 07:32:11

7 Why did you share with Mr. Jacobs the fact 07:32:15

8 that you were disheartened that your legal priv 07:32:20

9 training did not sink in to Mr. Fittarelli? 07:32:22

10 A. Jacobs was Mr. Fittarelli's manager. 07:32:25

11 Q. And you wanted his manager to know to get 07:32:27

12 feedback about this? 07:32:31

13 A. Yeah. It's frustrating when you spend all 07:32:32

14 of that time and fight all these dogs to put 07:32:35

15 together in a deck. 07:32:38

16 Q. You see the top email is from Rick Jacobs 07:32:41

17 to [REDACTED]? 07:32:44

18 A. Yes. 07:32:48

19 Q. And I noticed when you were reviewing this 07:32:48

20 document, you might have chuckled to yourself. I'm 07:32:50

21 wondering if you chuckled in response to that 07:32:53

22 forward of the communication from himself to his 07:32:55

23 personal email? 07:32:57

24 A. Yes, I did find that interesting. 07:32:59

25 Q. What do you find interesting about that? 07:33:01

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1 A. Well, this is information -- internal 07:33:03
2 information that he has exfiltrated. 07:33:05

3 Q. And what's the date on Mr. Jacobs' forward 07:33:09
4 to himself? 07:33:12

5 A. April 13, 2017, at 5:50 p.m. 07:33:15

6 Q. Do you recall the date of Mr. Jacobs' 07:33:28
7 resignation email? 07:33:32

8 A. I don't. 07:33:34

9 Q. Do you have Exhibit 9711 in front of you? 07:33:35

10 A. Let me take a look. Ninety-seven what? 07:33:40

11 Q. Eleven. 07:33:44

12 A. Yes. 07:34:01

13 Q. And if you flip to the last -- the page 07:34:02
14 ending 655 -- 07:34:05

15 A. Yes. 07:34:10

16 Q. -- the email from Rick Jacobs that begins 07:34:11
17 sort of a third down the page? 07:34:15

18 A. Yes. 07:34:17

19 Q. Is that his resignation email? 07:34:17

20 A. It appears to be. 07:34:19

21 Q. And what is the date on that? 07:34:21

22 A. April 14, 2017, 10:38 a.m. 07:34:22

23 MS. GOODMAN: No further questions. I 07:34:27
24 pass the question to your counsel. 07:34:29

25 MR. STUMPHAUZER: Actually, I think the 07:34:31

C E R T I F I C A T E

STATE OF FLORIDA)

: ss

COUNTY OF MIAMI-DADE)

I, KELLI ANN WILLIS, a Registered
Professional, Certified Realtime Reporter and
Notary Public within and for The State of
Florida, do hereby certify:

That CRAIG CLARK, the witness whose
deposition is hereinbefore set forth was duly
sworn by me and that such Deposition is a true
record of the testimony given by the witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage, and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 26th day of December, 2017.



KELLI ANN WILLIS, RPR, CRR